

1 immune from such relief. See id. § 1915A(b)(1),(2). Pro se pleadings must, however, be
2 liberally construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.
3 1988).

4 The Prison Litigation Reform Act (PLRA) provides that “[n]o action shall be
5 brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal
6 law, by a prisoner confined in any jail, prison, or other correctional facility until such
7 administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a).
8 Exhaustion is mandatory and no longer left to the discretion of the district court.
9 Woodford v. Ngo, 126 S. Ct. 2378, 2382 (2006) (citing Booth v. Churner, 532 U.S. 731,
10 739 (2001)).

11 Furthermore, the PLRA exhaustion requirement requires “proper exhaustion” of
12 available administrative remedies. Id. at 2387. The plain language of the PLRA requires
13 that *prior to filing suit*, all “administrative remedies available [must be] exhausted.” 42
14 U.S.C. § 1997e(a). The Ninth Circuit has interpreted 1997e(a) to mean that an action
15 *must* be dismissed unless the prisoner exhausted his available administrative remedies
16 *before* he or she filed suit, even if the prisoner fully exhausts while the suit is pending.
17 McKinney v. Carey, 311 F.3d 1198, 1199 (9th Cir. 2002). As Plaintiff has indicated that
18 he did not exhaust all of his available administrative remedies prior to filing the instant
19 action, the instant complaint is DISMISSED without prejudice for failure to exhaust his
20 administrative remedies prior to filing this action. The motion for leave to file an
21 amended complaint (Docket No. 6), and Plaintiff’s for a “stay of petition” is DENIED.
22 Plaintiff may file a new complaint in a new civil rights action once he has exhausted his
23 administrative remedies.

24 The Clerk shall terminate any motions and close the file.

25 IT IS SO ORDERED.

26 DATED: 5/9/08

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JEREMY FOGEL
United States District Judge